



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 9-5-78

RE: JACKSON ORCHARDS, INC./LEDGETOP FARMS

CASE NO. 78-TLC-146

THIS IS A DECISION IN RESPONSE TO THE REQUEST BY JACKSON ORCHARDS, INC./LEDGETOP FARMS (THE "EMPLOYER") FOR EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW (PURSUANT TO 20 CFR 655.212) OF A DENIAL OF ITS APPLICATION FOR A TEMPORARY LABOR CERTIFICATION. IN JUNE 1978, THE EMPLOYER FILED AN APPLICATION FOR A TEMPORARY LABOR CERTIFICATION FOR 15 ALIENS TO HELP HARVEST ITS 1978 APPLE CROP IN CROWN POINT, NEW YORK, DURING THE ESTIMATED PERIOD SEPTEMBER 11-OCTOBER 20, 1978. ON AUGUST 22, A U.S. DEPARTMENT OF LABOR CERTIFYING OFFICER SENT THE EMPLOYER A DENIAL OF THAT APPLICATION ON THE GROUND THAT, "PURSUANT TO 20 CFR 655.206(A)(1) OF THE REGULATIONS, CREW LEADER ROXROY T. FERRON WITH A CREW OF 15 WAS RECRUITED INTERSTATE."

APPEAL FILE DOCUMENTARY EVIDENCE OF THAT U.S.-WORKER CREW RECRUITMENT CONSISTS OF: (1) A "RURAL MANPOWER MOBILITY PLAN," ISSUED ON MAY 4, 1978, BY THIS DEPARTMENT, WHICH SETS FORTH A 1978 HARVESTING SCHEDULE FOR MR. FERRON'S CREW, INCLUDING APPLE HARVESTING IN CROWN POINT, NEW YORK, FOR THE EMPLOYER HEREIN DURING SEPTEMBER 10-OCTOBER 20; AND (2) A MEMORANDUM FROM AN EMPLOYMENT SPECIALIST AT THAT FLORIDA OFFICE, DATED MAY 9, 1978, WHICH STATES WITHOUT EQUIVOCATION: "ROXROY T. FERRON WILL ACCEPT THIS [LEDGETOP ORCHARD, CROWN POINT, NEW YORK] JOB ORDER."

TITLE 20 CFR 655.212(A) AUTHORIZES A HEARING OFFICER, IN HIS ADMINISTRATIVE-JUDICIAL REVIEW, TO CONSIDER ONLY THE "LEGAL SUFFICIENCY" OF THE RECORD UPON WHICH THE DENIAL OF THE APPLICATION FOR TEMPORARY LABOR CERTIFICATION WAS BASED: AND FURTHER PROVIDES THAT THE HEARING OFFICER "SHALL NOT RECEIVE ADDITIONAL EVIDENCE." THE RECORD IN THIS CASE IS LEGALLY SUFFICIENT IF IT MAY REASONABLY BE VIEWED AS WARRANTING A FINDING, PURSUANT TO 20 CFR 655.206(A) THAT 15 U.S. WORKERS HAVE A "FIRM COMMITMENT TO WORK FOR THE EMPLOYER"

PURSUANT TO THE ABOVE-MENTIONED HARVESTING SCHEDULE, IN THE SENSE THAT THEIR CREW LEADER IS "VERY LIKELY TO SIGN . . . A WORK CONTRACT" WITH THE EMPLOYER.

I AM PERSUADED THAT THE ABOVE-DESCRIBED APPEAL FILE DOCUMENTATION MAY REASONABLY BE VIEWED AS WARRANTING SUCH A FINDING, THAT THE RECORD IS THEREFORE LEGALLY SUFFICIENT, AND THAT THE APPEALED-FROM DENIAL OF A TEMPORARY LABOR CERTIFICATION MUST THEREFORE BE AFFIRMED. THE UNEQUIVOCAL CHARACTER OF THE STATEMENT, "ROXROY T. FERRON WILL ACCEPT THIS JOB ORDER," IN THE ABOVE-NOTED MAY 9 MEMORANDUM STRONGLY SUGGESTS THAT IT WAS BASED UPON DIRECT COMMUNICATION WITH THE CREW LEADER.

IN ITS TELEGRAM REQUESTING ADMINISTRATIVE-JUDICIAL REVIEW, AND IN A SUBSEQUENT TELEGRAM, THE EMPLOYER OFFERS NEW, EVIDENCE OF THE UNAVAILABILITY OF THE 15 U.S. WORKERS IN MR. FERRON'S CREW. AS NOTED ABOVE, 20 CFR 655.206(A) PROHIBITS MY RECEIPT AND CONSIDERATION OF SUCH ADDITIONAL EVIDENCE. HOWEVER, AS MENTIONED AT 20 CFR 655.0(C), THE EMPLOYER HAS A RIGHT TO AN ADJUDICATORY REVIEW OF THE DEPARTMENT OF LABOR'S DETERMINATION IN THIS MATTER BY THE U.S. IMMIGRATION AND NATURALIZATION SERVICE (SEE 8 CFR 214.2(H)(3)), AND MAY SUBMIT SUCH ADDITIONAL EVIDENCE TO THE INS FOR ITS CONSIDERATION IN CONNECTION WITH SUCH ADJUDICATORY REVIEW.

ACCORDINGLY , IT IS ORDERED THAT THE DENIAL OF A TEMPORARY LABOR CERTIFICATION FOR THE 15 ALIENS SOUGHT BY THE EMPLOYER IS AFFIRMED.

WALTER MORSE
Hearing Officer